IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No.454 of 2000

Date of Decision : 27.9.2007

State of H.P. …Appellant.

Versus:

Laxmi Nand …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. M. A. Khan, Addl. A. G.

For the respondent : None.

Sanjay Karol, J. (Oral).

The present appeal arises out of the judgment dated 29.2.2000 passed by the Addl. Chief Judicial Magistrate , Shimla, in Criminal Case No. 102-2 of 1996/94, titled as State v. Laxmi Nand, acquitting the accused of the charged offence u/s 408 of the Indian Penal Code.

As per the case of the prosecution, the accused as Director, Board of Directors of Suni Tehsil Co-operative Marketing and Consumers' Union Ltd. during the year 1991-92, criminally mis-appropriated a sum of Rs.9800/-, Rs.3600/- and

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Rs.800/- for which a complaint was made and FIR No. 339/93, dated 3.12.1993 u/s 406, 408 & 420 IPC was registered with Police Station, Dhali.

The investigation was carried out and the records being vouchers Exts. P-4 to P-6 and cheque Ext.P-1 was taken into possession from the complainant Society. The signatures of the accused were got examined through the Documents Examiner being Ext.PW-2/A and marks Exts.X-1 to X-7. Letter allegedly written by the accused being Ext.P-7 was taken into possession. After investigation the challan was presented in the Court and the accused was summoned and after compliance of provisions of Section 207 Cr.PC, the accused was charged for an offence u/s 408 IPC. The accused did not plead guilty and claimed trial.

In all, the prosecution examined 7 witnesses and the statement of the accused u/s 313 Cr.PC was also recorded.

Considering the evidence on record, the Court below came to the conclusion that the charge against accused was not proved by the prosecution as it had concealed relevant material, information and documents from the Court and that there was no entrustment of the property of the complainant Society, therefore, there was no question of any criminal mis-appropriation of the same.

Shri Mohan Lal (PW-4) who is the cashier of the complainant Society has stated that he did not receive any

voucher being Ext.P-6. He did not also disburse any amount to the accused. The Day Book, Cash Book and the Ledger showing the payment of a sum of Rs.9800/- to the accused has not been produced on record.

Shri Tilak Ram (PW-1) has no doubt admitted his signatures on Ext.P-6 but however, has stated that he had not made the payment himself. Thus, the prosecution has failed to prove any entrustment of the property of the complainant Society to the accused.

With regard to sum of Rs.3600/-, Shri Bhagat Ram (PW-5) has admitted that the goods receipt Ext.P-4 has not been entered in the Cash Book or Ledger. No explanation is forthcoming as to why the same was not done. The same has not been linked to the accused.

In order to prove the guilt of the accused, it is contended that the accused had issued a cheque of Rs.10,800/- (Ext.P-1) which was dishonoured. This fact in itself, according to the prosecution, would prove the guilt of the accused. The Court below found that it has not been proved on record as to whether the cheque pertains to the account of the accused. No official of the bank was examined to prove the same. Mere issuance of cheque in itself would not prove the criminal intent of the accused. Shri Mohinder Singh (PW-2) who is an expert, Govt. Examiner of Questioned Documents has also not been able to prove the fact that the cheque was signed by the accused.

Keeping in view the totality of the circumstances, I am of the considered view that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the Court below has correctly appreciated the facts as also the material on record to arrive at its conclusion. The accused has the benefit of having been acquitted by the Court below. I see no reason to interfere with the findings and conclusions of the Court below and the appeal is accordingly dismissed. Bail bonds stand discharged.

(Sanjay Karol), J.

September 27, 2007
(rana)